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No. 98-470

Supreme Court, U.S.

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In The
Supreme Court of the United States
October Term, 1998

RUHRGAS AG,

Petitioner,

vs.

MARATHON OIL CO.,
MARATHON INTERNATIONAL OIL COMPANY, and
MARATHON PETROLEUM NORGE A/S,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF OF AMICUS CURIAE CONFERENCE OF CHIEF
JUSTICES IN SUPPORT OF THE RESPONDENTS

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INTEREST OF AMICUS CURIAE¹

The Conference of Chief Justices consists of the highest justice or judge in each of the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands. The purpose of the Conference of Chief Justices is to provide an opportunity for consultation among the highest judicial officers of the several states, commonwealths, and territories, concerning matters of importance in the operation of state courts and judicial systems. In large part, the ultimate goal of the Conference is to improve the administration of justice.

The case of *Ruhrgas v. Marathon Oil Co., et al.*, will resolve an issue that has significant federalism consequences for every state's judicial system. When a plaintiff chooses a state judicial forum to adjudicate claims based on state law, the state has an obvious interest in adjudicating the case. This interest remains despite a defendant's decision to remove the case to federal court, especially when the federal court is without subject matter jurisdiction. Thus, a federal district court that carefully scrutinizes its subject matter jurisdiction in a removed case *before resolving any other issue* directly promotes the policies underlying the doctrine of subject matter jurisdiction by protecting state judicial systems from

¹ Statement required by Supreme Court Rule 37.6 – This brief has been exclusively authored by the Attorney for *Amicus Curiae* indicated on the cover of this brief, who is not an attorney for any of the parties to this litigation; and there was no monetary contribution to the preparation or submission of this brief made by any person or entity other than the *amicus curiae*.

an inappropriate expansion of federal jurisdiction beyond the limits set by Congress in accordance with Article III of the Constitution. On the other hand, a federal district court that avoids a challenge to its subject matter jurisdiction and dismisses a case for lack of personal jurisdiction collaterally estops state court adjudication of an issue that state courts have both the authority and competence to decide, and one that often turns in part on matters of state law. Thus, in the interest of protecting state court autonomy from inappropriate federal judicial encroachment, and in the further interest of fostering comity between this nation's state and federal courts, the Conference of Chief Justices has an interest in seeing this Court affirm the en banc ruling of the Fifth Circuit.

This *amicus curiae* brief is being filed with the written consent of all parties.

SUMMARY OF ARGUMENT

The determination of which of two essential jurisdictional prerequisites should be given priority by a federal district court ought to turn on the respective purposes of those jurisdictional doctrines, and not on considerations of judicial efficiency and economy. Although case-by-case considerations of judicial economy have traditionally played a role in the federal courts' application of certain *discretionary* doctrines, such as abstention and supplemental jurisdiction, the two jurisdictional doctrines at issue in the present case are *essential* to a federal court's authority to adjudicate a dispute; consequently, neither doctrine traditionally has turned on considerations of

judicial economy. Thus, it makes little sense to look to judicial economy in deciding which of the two jurisdictional prerequisites should be addressed first. Instead, this Court should focus on the policies underlying the requirements of personal jurisdiction and subject matter jurisdiction, which should be *mutually* served if at all possible. In a removal case, the only way for a federal court to achieve the goal of mutual promotion of the policies underlying both jurisdictional doctrines is to prioritize challenges to its subject matter jurisdiction. The doctrine of subject matter jurisdiction is designed to foster institutional concerns involving matters of comity and federalism – e.g., preventing federal judicial encroachment on the state courts' general jurisdiction, pursuant to which state courts are presumed to have the competence to decide matters of federal law (like personal jurisdiction). When a federal district court lacking subject matter jurisdiction nevertheless dismisses a case on personal jurisdiction grounds, it offends the very purposes of the subject matter jurisdiction requirement by improperly encroaching on state court authority to decide the personal jurisdiction issue, and by interfering with the state's interest in doing so, particularly when the plaintiff has initially chosen a state forum to adjudicate its claim, as is necessarily true when a case is in front of a federal district court on removal.

On the other hand, even assuming a lack of personal jurisdiction, a federal court that prioritizes challenges to its subject matter jurisdiction does not, at least in removed cases, threaten to undermine the purposes of the personal jurisdiction doctrine. The requirement of personal jurisdiction is an individual constitutional right of

the defendant which is designed to prevent both state and federal courts from upsetting a defendant's settled expectations regarding where it can reasonably anticipate being sued. Since state courts are bound to uphold this right and are presumed competent to decide matters of personal jurisdiction, state courts can and will ensure (as effectively as federal courts) that defendant enjoys this individual right. Therefore, the personal jurisdiction doctrine is in no way compromised by a requirement that federal courts determine their subject matter jurisdiction before moving on to personal jurisdiction. Nor can *Ruhrgas* persuasively argue that a federal court's deprioritization of the personal jurisdiction issue following removal somehow unfairly forces it to appear in federal court and litigate subject matter jurisdiction. Since *defendant* chooses whether or not to attempt removal to federal court, it is clearly defendant's choice whether or not to inject the issue of federal subject matter jurisdiction into the litigation. Assuming there truly is no personal jurisdiction, a defendant sued in state court has a vehicle available not only to resolve the personal jurisdictional issue but to resolve it on a priority basis, before ever spending time and money litigating the matter of federal subject matter jurisdiction - *i.e.*, simply raise the alleged absence of personal jurisdiction in state court instead of choosing to remove.

The preceding analysis provides a principled basis on which to confine the Fifth Circuit's ruling to removed cases. It is only in removed cases that the defendant has made a choice to inject federal subject matter jurisdiction into the case; thus, it is only in removed cases that defendant is *itself* responsible for creating the need to spend

time and money litigating subject matter jurisdiction in a forum in which defendant may not constitutionally be subject to personal jurisdiction. Indeed, the only time the Fifth Circuit's "subject matter jurisdiction first" approach remotely threatens the values underlying the doctrine of personal jurisdiction is in cases where the *plaintiff* has chosen a federal forum and thereby made an issue of subject matter jurisdiction. In cases brought originally by plaintiffs in federal court, the prioritization of subject matter jurisdiction may somewhat undermine defendant's due process rights by forcing it to litigate at least the subject matter jurisdiction issue before the court ever considers defendant's claim that it is not subject to the court's personal jurisdiction. In cases originally filed in *state* court, however, it will be the *defendant* who controls whether or not it will have to litigate federal subject matter jurisdiction prior to having an opportunity for a dismissal grounded on the absence of personal jurisdiction. A defendant who wishes to prioritize a quick dismissal on personal jurisdiction grounds can seek to do so immediately in state court. This analysis is entirely consistent with the notion that the doctrine of personal jurisdiction is an individual right of the defendant. Since personal jurisdiction is an individual right that, unlike subject matter jurisdiction, can be altogether waived by a defendant choosing not to raise it, surely any interest in having it decided on a priority basis (before spending time and money litigating any other issue in an allegedly "unconstitutional" forum) can similarly be forfeited by a defendant's choice to remove the case to federal court. In short, the Fifth Circuit approach is not a *per se* rule for any and all cases in federal court. The Fifth Circuit

restricted its ruling to removed cases and, as just demonstrated, there is a principled basis for doing so.

ARGUMENT

Ruhrgas builds its argument on two "bedrock principles" of jurisdiction that, upon close inspection, say little about how the issue before the Court should be resolved. The first principle is that every district court has jurisdiction to decide its own jurisdiction. See *United States v. United Mine Workers*, 330 U.S. 258, 290-91 (1947). The second is that personal jurisdiction and subject matter jurisdiction are both essential prerequisites to the district court's appropriate exercise of jurisdiction. What Ruhrgas fails to appreciate is that neither of these "bedrock principles" conflicts with the Fifth Circuit's ruling that, in removed cases, a district court should resolve challenges to its subject matter jurisdiction first. The Fifth Circuit ruling neither deprives a district court of jurisdiction to decide its own jurisdiction, nor does it somehow relegate personal jurisdiction to a less than essential prerequisite to a district court's authority to adjudicate the merits of a case. In short, the "bedrock principles" upon which Ruhrgas bases its challenge to the Fifth Circuit holding are in no way threatened by that holding. Nevertheless, Ruhrgas reasons from these principles, in rather conclusory fashion, that a district court therefore has the discretion to pick and choose which of the two jurisdictional issues it should decide first, primarily on the basis of which one is easier to decide.

While Ruhrgas's concern for the efficiency and economy of this nation's federal courts is certainly commendable, it is easy to forget when reading its brief that neither of the jurisdictional doctrines at issue turn on considerations of judicial economy, and that Ruhrgas is the party that chose to inject the tricky subject matter jurisdiction issues into the case by removing it to a federal forum. Although the choice of whether to remove is certainly defendant's to make, one of the consequences of that choice is to leave behind a state court where matters of personal jurisdiction necessarily would be given priority. Both of these aspects of the case – *i.e.*, that judicial economy concerns are irrelevant to mandatory jurisdictional prerequisites, and that Ruhrgas chose the federal forum – strongly support affirming the Fifth Circuit.

First, Ruhrgas's emphasis on judicial economy is misplaced. Since the issue before the Court is whether a federal district court on removal should decide subject matter jurisdiction before reaching personal jurisdiction, the critical policy concerns that should inform the resolution of this issue are surely those policies that underlie the two distinctive requirements of subject matter jurisdiction and personal jurisdiction. And it is worth noting that *neither* the doctrine of subject matter jurisdiction *nor* the doctrine of personal jurisdiction turn on case-by-case considerations of judicial economy. Indeed, as Ruhrgas itself points out (in one of its "bedrock principles"), both aspects of jurisdiction are essential. That is precisely why the analogies it attempts to draw to abstention and supplemental jurisdiction are transparently inapt. Abstention and supplemental jurisdiction are *discretionary* prudential

doctrines that inherently require case-by-case decision-making that may turn, in part, on considerations of economy and efficiency. See, e.g., *City of Chicago v. International College of Surgeons*, 522 U.S. 156, ___, 118 S. Ct. 523, 534 (1997) (listing "judicial economy" as a factor relevant to a federal court's decision whether to exercise supplemental jurisdiction); *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 500-01 (1941) (listing the "smooth working of the federal judiciary" as one of the considerations relevant to a federal court's discretionary exercise of abstention). In stark contrast, as *Ruhrgas* itself emphatically and repeatedly points out, it is *essential* that a federal district court have *both* subject matter jurisdiction and personal jurisdiction in order to adjudicate a claim. Therefore, this Court's precedent construing *non-mandatory discretionary* doctrines like abstention and supplemental jurisdiction is simply irrelevant to the matter currently before the Court.

Instead of focusing on concerns, like judicial economy, that have no place in the determination of either of the two mandatory jurisdictional requirements at issue, and instead of relying on precedent construing wholly different discretionary doctrines, the key to this case rests in an appreciation of *why* both subject matter jurisdiction and personal jurisdiction are mandatory. When one appreciates the completely different reasons why these two completely different types of jurisdiction are mandatory, it becomes clear why a federal district court should resolve its subject matter jurisdiction first when a case is before it following removal.

The doctrine of subject matter jurisdiction protects certain important institutional interests that transcend the

particular interests of the parties. See *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 851 (1986). First, and foremost, enforcing the doctrine of subject matter jurisdiction ensures that the federal courts do not exceed the limits that Congress has placed on their power. Under Article III of the Constitution, there is no inherent federal district court power arising from the Constitution. Rather, with the exception of the United States Supreme Court, federal courts derive their jurisdictional authority from Congress. Thus, rigorous scrutiny of subject matter jurisdiction is a classic example of federal judicial restraint; it represents the federal judiciary's effort to avoid assuming more power than Congress (or the Framers) intended. Additionally, rigorous federal district court scrutiny of its subject matter jurisdiction serves important comity and federalism concerns. As the Fifth Circuit en banc majority recognized, under our federal constitutional scheme, the states are assumed equally capable of deciding state and federal issues (including, of course, the Due Process "minimum contacts" personal jurisdiction issue). Thus, to the extent that Congress has limited the jurisdiction of the lower federal courts, the state courts become the sole vehicle for the initial determination of state and federal issues. According to the leading treatise on federal practice, "it would not simply be wrong but indeed would be an unconstitutional invasion of the powers reserved to the states if federal courts were to entertain cases not within their [subject matter] jurisdiction." 13 CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL

PRACTICE AND PROCEDURE § 3522, AT 61-62 (2D ED. 1984).² Indeed, this Court has emphasized that "[d]ue regard for the rightful independence of state governments" requires that federal courts "scrupulously confine their own jurisdiction to the precise limits which [a federal] statute has defined." *Victory Carriers, Inc. v. Law*, 404 U.S. 202, 212 (1971).

In contrast to subject matter jurisdiction, the Due Process limit on personal jurisdiction "represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty." *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). Thus, the doctrine of personal jurisdiction prevents both state and federal courts from upsetting a defendant's settled expectations regarding where it can reasonably anticipate being sued. *Insurance Corp. of Ireland*, 456 U.S. at 702-04.

In light of the disparate purposes which underlie personal jurisdiction and subject matter jurisdiction, it becomes apparent that subject matter jurisdiction should take precedence in removed cases – not because it is necessarily "superior" to personal jurisdiction, but because deciding personal jurisdiction in lieu of subject matter jurisdiction can defeat the purposes underlying

² The treatise does not in any way qualify this forceful statement with an "unless the invasion of state power consists only of deciding a personal jurisdiction issue." Such a qualification, of course, would be fundamentally inconsistent with the broad and forceful proposition quoted above.

the subject matter jurisdiction requirement, while deciding subject matter jurisdiction in lieu of personal jurisdiction poses no threat whatsoever, at least in removed cases, to the purposes underlying the personal jurisdiction requirement. If both doctrines are equally essential, as Ruhrgas argues, then the purposes of both should be mutually served whenever possible. In removal cases, mutual service of the disparate purposes of the two jurisdictional prerequisites *can* be achieved – but *only* by taking the issues in the order prescribed by the Fifth Circuit. This is because a dismissal on personal jurisdictional grounds in a removed case where subject matter jurisdiction is absent collaterally estops the relitigation of the personal jurisdiction issue in state court, even though the action was originally filed in state court, even though the personal jurisdiction issue is one that the state courts are competent to decide, even though the absence of federal subject matter jurisdiction to support the defendant's removal normally results in an immediate remand to state court, and even though the personal jurisdiction issue may require an interpretation (as it did in this case) of state law in order to assess the "contacts" between the defendant, the forum, and the causes of action. For a federal district court to permanently avoid resolution of subject matter jurisdiction in such a case obviously undermines the very institutional values that rigorous federal court scrutiny of its subject matter jurisdiction is intended to foster.

On the other hand, a federal district court's dismissal of a removed case on subject matter jurisdiction grounds poses no similar threat to the purposes underlying the doctrine of personal jurisdiction, even when the federal

district court's "subject matter dismissal" leaves the defendant's challenge to personal jurisdiction undecided, as it would under the Fifth Circuit approach. This is because the doctrine of personal jurisdiction is in the form of a personal constitutional right of the defendant. Because the state courts as well as the federal courts are bound to uphold this right, and are competent to resolve disputes centering on the right, state courts can and will ensure that defendant enjoys this individual right. The personal jurisdiction doctrine is, therefore, in no way compromised by a requirement that federal courts determine their subject matter jurisdiction before moving on to personal jurisdiction. Nor can Ruhrgas persuasively argue that a federal court's deprioritization of the personal jurisdiction issue following removal somehow unfairly forces it to appear in federal court and litigate subject matter jurisdiction. Since *defendant* chooses whether or not to attempt removal to federal court, it is clearly defendant's choice whether or not to inject the issue of federal subject matter jurisdiction into the litigation. Assuming there truly is no personal jurisdiction, a defendant sued in state court has a vehicle available not only to resolve the personal jurisdictional issue but to resolve it on a priority basis, before ever spending time and money litigating the matter of federal subject matter jurisdiction – *i.e.*, simply raise the alleged absence of personal jurisdiction in state court instead of choosing to remove. If personal jurisdiction is as obviously lacking and as simple to resolve in this case as Ruhrgas claims throughout its brief, and if federal subject matter jurisdiction poses the difficulty of resolution that Ruhrgas claims, what possible strategy motivated it to remove in the first

place? It certainly could not have been the concern for federal judicial efficiency that it now so openly displays in its brief. Either the personal jurisdiction issue was never as easy and obvious as Ruhrgas claims, or Ruhrgas simply does not trust the state courts to resolve it fairly and correctly. If the former, that certainly bears on the genuineness of its arguments; if the latter, such a view not only insults the states but is inconsistent with several of the fundamental notions underlying the usual requirement that federal courts carefully scrutinize their subject matter jurisdiction in every case – that state courts have general jurisdiction, that state courts are competent to resolve matters of federal constitutional law (like personal jurisdiction), and that state sovereignty is therefore directly impacted by federal courts that act outside their subject matter jurisdiction.

Additionally, the preceding analysis provides a principled basis on which to confine the Fifth Circuit's ruling to removed cases. It is only in removed cases that the defendant has made a choice to inject federal subject matter jurisdiction into the case; thus, it is only in removed cases that defendant is *itself* responsible for creating the need to spend time and money litigating subject matter jurisdiction in a forum in which defendant may not constitutionally be subject to personal jurisdiction. Indeed, the only time the Fifth Circuit's "subject matter jurisdiction first" approach remotely threatens the values underlying the doctrine of personal jurisdiction is in cases where the *plaintiff* has chosen a federal forum and thereby made an issue of subject matter jurisdiction. In cases brought originally by plaintiffs in federal court,

the prioritization of subject matter jurisdiction may somewhat undermine defendant's due process rights by forcing it to litigate at least the subject matter jurisdiction issue before the court ever considers defendant's claim that it is not subject to the court's personal jurisdiction. In cases originally filed in *state* court, however, it will be the *defendant* who controls whether or not it will have to litigate federal subject matter jurisdiction before having the opportunity for a dismissal grounded on the absence of personal jurisdiction. A defendant who wishes to prioritize a quick dismissal on personal jurisdiction grounds can seek to do so immediately in state court instead of choosing to remove. This analysis is entirely consistent with the notion that the doctrine of personal jurisdiction is an individual right of the defendant. Since personal jurisdiction is an individual right that, unlike subject matter jurisdiction, can be altogether waived by a defendant choosing not to raise it, surely any interest in having it decided on a priority basis can similarly be forfeited by a defendant's choice to remove the case to federal court. In short, the Fifth Circuit approach is not a *per se* rule for any and all cases in federal court. The Fifth Circuit restricted its ruling to removed cases and, as just demonstrated, there is a principled basis for doing so.³

³ Indeed, under the analysis proposed in this *amicus curiae* brief, the Fifth Circuit approach need not even be a *per se* rule for all cases removed from state to federal court. For example, there will be some cases filed in state courts raising exclusively (or primarily) claims based on federal law. In such cases, the personal jurisdiction inquiry may not involve state law matters to the degree that they are implicated by the personal jurisdiction inquiry in the present case. That is not to say that such a case poses insignificant comity concerns. Since state

In sum, the issue before the Court is less about judicial economy than it is about judicial restraint. Neither of the two jurisdictional doctrines at issue turns on judicial efficiency and economy.⁴ Rather, as *Ruhrgas* itself

courts are competent to decide even exclusively federal issues, and have an interest in doing so when a plaintiff chooses to avail itself of a state forum, the comity and federalism concerns are still substantial, though perhaps less so than in a case like the present one where the claims filed in state court are based exclusively on state law.

Additionally, it is important to note that *per se* rules are not necessarily a bad idea when they operate in the context of *procedure*, where consistency and predictability are appreciated by both courts and litigants.

⁴ Even if judicial economy concerns somehow affect the outcome in this case, *Ruhrgas* focuses only on the economy concerns of this particular case without considering how the Fifth Circuit's rule can promote economy concerns over the run of cases by preventing forum-shopping. Shopping for the best forum to litigate the personal jurisdiction question will occur, as it probably did in this case, due to differences in state and federal law regarding who has the burden of proof on the minimum contacts issue. In many states, like Texas, it is the *defendant* who bears the burden of proving no minimum contacts, whereas in federal court it is the *plaintiff's* burden to establish the minimum contacts. And this is just one example of a state court approach to the minimum contacts issue that differs from the federal approach, but that has never been foreclosed by this Court.

Finally, subject matter jurisdiction is rarely going to be more burdensome to decide than personal jurisdiction. Since personal jurisdiction is highly fact-intensive, it will often be necessary (as it was in this case) to engage in costly and lengthy discovery before the issue can be decided. And even if this is the rare case where the personal jurisdiction question is "easier," just how much judicial time is saved when the parties have already fully briefed and argued the subject matter jurisdiction question? If

acknowledges, both doctrines are essential prerequisites to a federal district court's power to adjudicate. And one of those doctrines – subject matter jurisdiction – is specifically founded in no small part on notions of federalism requiring scrupulous federal court scrutiny of its subject matter jurisdiction so as not to intrude on the state courts' general jurisdiction bailiwick. The state courts' general jurisdiction, of course, both provides their authority and assumes their competence to decide federal questions such as the constitutionality of exercising personal jurisdiction over the defendant (which, as in this case, often involves considerations of state law). The only way for a federal court to consistently promote those institutional interests and federalism concerns that are the very point of the subject matter jurisdiction requirement is by deciding challenges to its subject matter jurisdiction *before* addressing challenges to its personal jurisdiction. Finally, if this approach is confined to removed cases, it will in no way undermine the purposes of the personal jurisdiction doctrine.

CONCLUSION

Because federal courts should, when possible, administer themselves in a way that mutually serves the policies underlying both the doctrine of subject matter jurisdiction and the doctrine of personal jurisdiction, the

all that remains is to think, decide, and draft an order explaining the decision, can a federal court truly justify the negative impact on comity and federalism that results from deprioritizing challenges to its subject matter jurisdiction?

Amicus Curiae Conference of Chief Justices respectfully urges this Court to affirm the Fifth Circuit's ruling that a federal district court, in a removed case, should resolve a challenge to its subject matter jurisdiction before addressing a challenge to its personal jurisdiction.

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